charge was "uncustomed goods" within the meaning of the Customs Enactment, 1936. I deliberately refrain from doing so in order not to prejudice the proceedings which are still pending against the said Ng Kim Lek.

As to the fifth ground of appeal, it is conceded by the respondent that the prosecuting officer did not reply to the submission made by defence Counsel at the close of the case for the prosecution that there was no case for the respondent to answer. It is submitted that the Magistrate erred in that he should have permitted the prosecution to reply to the point of law so made by defence Counsel, and that by omitting to do so he caused a failure of justice.

It is to be noted that the record does not show that any application was made by the prosecuting officer to reply to defence Counsel's address. Now, section 173 of the Criminal Procedure Code prescribes the procedure at summary trials. It is to be noted that this section is silent on the subject of addressing the Court. But section 174, the marginal note to which reads "Addresses", provides, omitting sub-section (ii) which does not apply here :—

"(i) The officer conducting the prosecution need not open the case but may forthwith produce his evidence.

(iii) The officer conducting the prosecution shall have the right of reply on the whole case when the accused has adduced evidence."

From these sub-sections, therefore, it would seem that the prosecuting officer could not as of right claim to address the Court in reply to a submission made at the close of the case for the prosecution that there is no case to answer. Although in practice a Magistrate generally hears both sides on a submission of no case to meet at the close of the case for the prosecution, he is, in my view, not bound to do so. It is, I think, clearly a matter in his discretion. This view is supported by the case of *Chow Kwan v. Public Prosecutor*[5] wherein Mudie, J. observed :—

"If a point of law is taken by the defence, in my opinion, it is open to the Magistrate to ask the prosecuting officer to argue the point....."

That being my view, it cannot be argued that the Magistrate erred in omitting to do what is a purely discretionary act, and this ground of appeal must also fail.

The result is that this appeal is dismissed.

Appeal dismissed.

LIM ENG SOON v. PUBLIC PROSECUTOR.

[A. Cr. J. (Storr, J.) May 14, 1953]

[Johore Bahru — Criminal Appeal No. 13 of 1953]

Dangerous Drugs Ordinance, s. 4(1) — Importation of raw opium — Absolute Prohibition — Mens rea.

This was an appeal against the conviction of the appellant on a charge under section 4(1) of the Dangerous Drugs Ordinance, 1952. On appeal the question was raised whether the wording of the section indicated an absolute prohibition or whether it was necessary for the prosecution to prove mens rea in order to secure a conviction.

Held: (1) the provisions of section 4(1) of the Dangerous Drugs Ordinance amount to an absolute prohibition of the import of raw opium and therefore it is unnecessary for the prosecution to prove mens rea or knowledge; (2) the lack of knowledge of the accused is a matter for mitigation of sentence.

Cases referred to :—

(1) *Ong Aik Phow v. Rex* (1937) M.L.J. 73.

(2) *Reynolds v. G. H. Austin & Sons Ltd.* (1951) 1 All E.R. 606.

(3) *Cundy v. Le Cocq* (1883-4) 13 Q.B.D. 207 at p. 209.

CRIMINAL APPEAL.

Sardon Jubir for the appellant.

M. Suffian (Federal Counsel) for the respondent.

Storr, J. : — This was an appeal from the decision of the learned President of the Sessions Court, Johore Bahru, who convicted the appellant for an offence under section 4(1) of the Dangerous Drugs Ordinance No. 30 of 1952. That section reads :—

"4(1). No person shall import into the Federation any raw opium, coca leaves or Indian hemp except under and in accordance with the authorisation of the High Commissioner and into such ports or places as may be prescribed by such authorisation."

The only point raised on appeal by Inche Sardon was whether the wording of that section indicated an absolute prohibition or whether it was necessary for the prosecution to prove *mens rea* in order to secure a conviction.

The learned President in his very careful judgment stated :—

"In my opinion for the purpose of proving the charge under section 4 it is not necessary for the prosecution to invoke any of the presumptions referred to. As a driver of the lorry he was responsible for bringing the lorry as well as its load into the Federation. Although it is not submitted by Counsel, I formed the impression that the defence would want me to hold that mens rea is an essential element in the charge. If that is the correct view of the law then the 2nd accused (i.e. appellant) must be acquitted as I am satisfied that there is no evidence to show that he had any knowledge that the parcel was in the lorry. It is the cardinal rule of the interpretation that words in the statute must be given its plain and natural meaning. If this is a charge under section 6 for possession of raw opium, then on the authorities I am bound to ascertain that there must be conscious possession. But this is a charge under section 4 and in my view this section provides for a complete prohibition against the importation of raw opium, coca leaves or Indian hemp except under or in accordance with the authorisation of the High Commissioner."

From the above it is quite clear that he came to the conclusion that on the evidence the prosecution had not proved *mens rea* or knowledge against the appellant

but that he found that the section amounted to an absolute prohibition.

On considering the many authorities on this point and in particular the case of *Ong Aik Phow v. Rex*[1] in which Whitley, Ag. C.J., decided that the provisions of section 14(1) of the Rubber Regulation Ordinance, 1934 (which is practically the same as the present section) which reads :—

"No rubber shall be imported into the Colony unless it is accompanied by a certificate of origin duly authenticated by the competent authority in the country of origin"

amounted to absolute prohibition, I have come to the conclusion that the provisions of section 4(1) of the Dangerous Drugs Ordinance, 1952, amount to an absolute prohibition of the import of raw opium and that therefore it is unnecessary for the prosecution to prove *mens rea* or knowledge.

As Devlin, J. in *Reynolds v. G. H. Austin & Sons Ltd.*[2] stated "It may seem on the face of it hard that a man should be fined, and, indeed, made subject to imprisonment, for an offence which he did not know he was committing, but there is no doubt that the legislature has for certain purposes found that hard measure to be necessary in the public interest. The moral justification behind such laws is admirably expressed in the following words of Dean Roscoe Pound in his book, The Spirit of the Common Law: see L.Q.R., vol. 64, p. 176 :—

"Such statutes are not meant to punish the vicious will but to put pressure upon the thoughtless and inefficient to do their whole duty in the interest of public health or safety or morals."

In *Cundy v. Le Cocq*[3] Stephen, J. states, with regard to section 13 of the Licensing Act, 1872, "I am of opinion that the words of the section amount to an absolute prohibition of the sale of liquor to a drunken person, and that the existence of a *bona fide* mistake as to the condition of the person served is not an answer to the charge, but is a matter only for mitigation of the penalties that may be imposed."

Following those remarks, I think that in a case such as this where it has been held (and there is reason for so holding on the evidence before the learned President) that the appellant had no knowledge that he was importing raw opium at the time, lack of knowledge is no answer to the charge but it is a matter for mitigation of the sentence. I think, therefore, that the sentence of a fine of $2,000 or 8 months rigorous imprisonment, which was the same sentence meted out to the attendant of the lorry who was charged with the appellant and was found by the learned President to be in possession of the raw opium imported, to be excessive in the circumstances of this particular case. I reduce the sentence to a fine of $500 or in default 2 months imprisonment. The appeal against the conviction is dismissed.

Sentence reduced.
Appeal dismissed.

GOH TONG v. PUBLIC PROSECUTOR.

[A. Cr. J. (Storr, J.) July 25, 1953]

[Muar — Criminal Appeal No. 4 of 1953]

Dangerous Drugs Ordinance, s. 9(2) — Possession of opium — Service of Chemist's certificate on accused — Criminal Procedure Code (Cap. 6), s. 399(i).

This was an appeal against the conviction of the appellant on a charge of possession of prepared opium. It was argued on appeal that the Chemist's certificate put in by virtue of section 399(i) of the Criminal Procedure Code was not served on the appellant ten days' before the commencement of the trial as required by the proviso to that section.

Held: in this case the chemist's report was not delivered to the appellant or his counsel ten days before the commencement of the trial that is when the appellant was first charged and therefore the proviso to section 399(i) of the Criminal Procedure Code has not been complied with and the report not having been passed was not admissible in evidence.

Cases referred to :—

(1) *Public Prosecutor v. Tay Tuan* (1953) M.L.J. 20 dissented from.

(2) *Chong Yik v. Public Prosecutor* (1953) M.L.J. 72.

CRIMINAL APPEAL.

C. S. Jayaswal for the appellant.

M. Suffian (Federal Counsel) for the respondent.

Storr, J. : — This was an appeal from the President, Sessions Court, Muar, against the conviction of the appellant on the following charges :—

"1. That you, Goh Tong, on 5th November, 1952, at about 6.45 a.m. in premises at Parit Pechah Mukim of Sri Menanti, Muar, did have in your possession prepared opium, to wit, 14 tahils 3 chees 9 hoons contrary to section 9(1)(b) and punishable under section 9(2) of the Dangerous Drugs Ordinance No. 30 of 1952.

2. That you, Goh Tong, at the same time, date and place being the occupier of the aforesaid premises did permit those premises to be used for consumption of prepared opium, contrary to and punishable under section 10(1) of the Dangerous Drugs Ordinance No. 30 of 1952."

With regard to the second charge, I consider that the evidence is quite clear that Exhibit P1 (pipe with head and chandu lamp) and P18 (chandu smoking pipe) were used as instruments for the consumption of opium. Evidence was given by a Senior Customs Officer (Mr. A. E. J. Milroy) which raised a presumption under section 37(b) of the Dangerous Drugs Ordinance No. 30 of 1952 that the appellant was the occupier of the premises and under section 37(i) that the Exhibits P1 and P18 were used in the consumption